IN BANCO. BARTWELL AND WIDEMANN, 32. OCT. TERM, A. D. 1870.

Moser of Wm. C. Jones, an Attorney-at-law. On Information of the Attorney-General, rule in banco.

The Information presents that May 25, one Peterson was committed for trial 1870. Term of this Court, for assault with a deadly weapon, two witnesses being at the same time committed to testify. That the respondent appeared for the prisoner at said Term of Courts when proceedings were laid of which the followse not on the Calendar, but Attorneyral and W. C. Jones, for defendant, acre

that certain depositions of witnesses, pocation, might be taken by the Clerk, to be in any trial for the matter charged, and case to stand continued to next Term." That July 19, the depositions were taken, and the following agreement endersed thereon : "It is agreed that the foregoing depositions of William Carroll and Patrick O'Donnell may be used in evidence in the trial of any indictment against Orloff Peterson for the assault on William Carroll above referred to, and that no further proof of the identity of the said Orloff Peterson shall be required. Stephen H. Phillips, Attorney-General. W. C. Jones, Attorney for defendant. Court-House, Honolala, July 19, 1870." That the respondent held himself out as fully authorized to make the said agreement, and that the Attorney-General, relying on the good faith of the respondent as an Attorney of this Court, and believing him to have full authority in the premises, allowed the said witnesses to leave the Kingdom, having no other testimony on which to rely; all of which facts the respondent bath at all times well known. but he nevertheless gave the Attorney-General up to the day set for trial, no intimation that the said agreement was unauthorized by the prisoner. or that exception would be taken to its enforcement, at which late period it was impossible to obtain testimony, and it was adjudged to be the duty of the Court no longer to detain the said Peterson, who was therefore discharged, and the sent his client should be unquestioned, and that collected by them for private parties, or for any duceit or other gross misconduct." Sect. 1066. have a right to assume, at all times, that all and approval of those whom they claim to represent, and to govern themselves accordingly, and client." Sect. 1069. that when proceedings are had upon the faith of

to the confidence which was misplaced in the amine the witnesses produced by himself, and cross-examine those produced against him, and to the written testimony of said parties should be fully heard in his defence." Art. 7, Const. read in evidence at the trial of the indictment. well knowing that fatal reliance was placed upon said agreement, and the implied pledge of authority therein contained.

- Wherefore, the said Attorney General moves this honorable Court may seem meet." The unswer is as follows, viz. :

stantial cause for striking the name of an Attorney from the roll, and is insufficient in law. 2. That the statements in said complaint

error, admitted the same to the Court.

of facts to the Court : That at the adjourned case of the King vs. Orioff Peterson, in order to release them from confinement, and this respond. a criminal cause cognizable before a jury. eat out of motives of humanity and to release and witnesses from prison in good faith consented that the prisoner escaped trial. He says he acted te taking said depositions, without reflecting at it good faith, and we see no reason to doubt his the time that he was taking a responsibility not authorized by the Constitution and laws of this certainly inconsistent with an intention to rely Kingdow; that at the time of taking said depo- on constitutional defects in the testimony. He witions, to wit, on the 18th of July, 1870, the should have lost no time, however, in notifying said Orloff Peterson was not present, and L. the Attorney.General of his subsequent view of McCally, Esq., the Clerk, enquired if the Attorney-General did not require the presence of the and Orioff Peterson, when he, the Attorney out reflection upon its validity, and without con-General, replied that he 'did not require his presence, and this respondent avers that he did responsibility assumed by the respondent, in thus not at any time consult with said Orloff Peterson about the taking of said depositions, and did not think at the time that he had not full power to act in the premises; that after said depositions were taken, this respondent did not think any more of the matter until the present term of the the Supreme Court, when it was suggested to him by an Attorney of this Court, that said depositions were not legal, and that this respondent's agreement with the Attorney-General was of no force or validity to conclude his rights; whereupon this respondent examined the Constitotion and the authorities upon the subject, and became convinced that he had exceeded his an- MARINE RAILROAD thority in the matter, and in fact did not arrive fully at the conclusion and examine fully the authorities till the morning of the day fixed for trial when as soon as he saw the Attorney-General, he informed him that he felt convinced that Orioff Peterson could not be legally convicted on the depositions, and that the said Attorney-General called the matter up before the Court as soon as the case was called for trial, when this respondent, acting under the influence of conscientious scruples, because he be-Heved be had erred in making the agreement aforesaid, and that Orioff Peterson that constitu-

respondent avers that he acted in good faith in

conscientions motives, and had not the remutest idea of acting deceitfully and in bad faith with the Attorney-General or the Government; and this respondent further avers that the high position and presumed legal learning of the Attorney-General three him off his guard, and he presumed to show cause issued, returnable before the Court he was acting legally when the Attorney-General d the said agreement to him, and had no other idea at the time but that the depositions July were legal, and could be read on the trial of said Orloff Peterson, and that if there is any culpa- CASTLE & COOKE, bility or blame in this matter, it should rest on

w, and when he does any act which is calculated ing as the record : "The King vs. Orioff Peterson. to overreach a prisoner or his counsel by procuring the waiver of a constitutional right against clear principles of law, and then throwing the blame upon the prisoner's Attorney, he is certainly in the wrong."

At the hearing, the Attorney-General produced and read the following entry in the Clerk's Journal, viz. : "July 26, 1870. July Term. Pris'r Peterson arraigned and pleaded Not Guilty. Case continued by agreement." L. McColly, Clerk of the Court, testified that when the depo sitions were taken, some one remarked that it was very hard that the witnesses, hard laboring men, should be kept in confinement so long, already three months; that no intimation was then made by the respondent of his want of authority to agree to the depositions, and that he thinks the respondent then asked, "Where is the prisoner?" to which the Attorney-General replied. "The prisoper is not called for."

D. K. Fyfe, Juilor, testified that the respondent visited the prisoner Peterson and told him about the depositions shortly after they were taken.

W. C. Parke, Marshal testified that on the first day of this Term, the respondent moved that Peterson's case be continued to get further testimony, but on consulting his client withdrew the

S. H. Phillips, Attorney General, for the Rule. W. C. Jones, pro se, contra.

OPINION OF THE COURT BY HARTWELL, J. By the Civil Code, practitioners of law "shall be summarily amenable to the Courts of record. enforcement of the penalty of the law against and may be fined, imprisoned, or dismissed from him became impossible. "And the Attorney- the roll of practitioners for satisfactory cause, General further says it is incident to the office of upon the complaint of any party aggrieved by an Attorney in this Court, that his right to repre. their mal-practice, or for non-payment of moneys

"Practitioners of law shall have control to acts done in the name and behalf of their re. judgment and execution of all suits and defences spective clients, in open Court or in other pro- confided to them; provided, however, that no coedings necessarily connected with the conduct such practitioner shall have power to compromise, of cases pending in Court, have the full sanction aringate and settle such matters confided to him unless upon special authority in writing from his

"The parties to a creil suit may, with the consuch assumed authority, which said attorneys pes sent of Court, waive the right to a trial by jury mit to be had without suggesting their want of either by written consent, or by oral consent in authority, to the prejudice of public prosecutions open court entered on the minutes." Sect. 1137.

"No person shall be held to answer for any bie for the fraud resulting from such concealment, crime or offence, except in cases of impenchment as otherwise the prefession would be exposed to or for offences within the jurisdiction of a Police great public scandal, and the confidence which or District Justice or in summary proceedings bught to be reposed in all acts of Attorneys and for contempt, unless upon indictment fully and Counsellers of this Court would be wholly de- plainly describing such crime or offence, and he shall have the right to meet the witnesses who - And the Attorney-General further says that are produced against him, face to face; to prothe failure of the prosecution against the said duce witnesses and proofs in his own favor; and Orloff Peterson is, wholly and directly attributable by hunself or his Counsel, or his election, to ex-

The delicate and responsible duties of an attoragainst said Orioff Peterson, and that said William ney-at-law correspond with the extent of the C. Jones was guilty of a breach of duty, as an powers entrusted to him. He must exercise Attorney and Counsellor of the Court in con- good faith in his dealings with Court, clients, and senting to such an agreement without authority his legal brothren. He is responsible for the from his client, and not disclosing such want of exercise of a reasonable degree of professional anthority to said Attorney-General, although skill, and for proper diligence in attending to his causes, failing in which, or in case of deceit or mal practice, he may become liable to the Court under the statutes cited, or to clients in damages.

The respondent waived his client's Constitushow cause why his name should not be stricken. There is a large class of agreements between from the roll of Attorneys and Counsellors of Counsel, which facilitate trials, are of mutual adthis Court, and such other preceedings had as to vactoge, and by which clients are bound. Such agreements usually refer to matters of rules and * practice, continuances, waivers of common law 1. That the said complaint sets forth no subcesses, rights of appeal, &c., in which Counsel are presumed to know, and to be duly authorized to represent, the client's interests. But in crimamount to this: that the respondent made an inul causes, it is masale to waive constitutional agreement to good faith under a mistaken impress. requirements. The maxim, " Quilibet potest resion of the law, and, after he had discovered his nunciare juri pro se introducto, -that anyone may waive rights intended for his own benefit,-3. And therefore the respondent in forther is restricted to the rights of the party himself. answer to this complaint and the rule to show and can not affect the rights of others. The cause, respectfully makes the following statement | public are interested that criminal trials be conducted according to the forms of law. Hence, Term of the Supreme Court, in the month of no one can waive the presentment and finding of July, 1810, as set forth in said complaint, the an indictment for an indictable offence. Under Atteruer-treneral requested the respondent to our statute, clients in civil suits would no doubt agree to the taking of the depositions of William be bound by agreements of Counsel to waive Carroll and Patrick O'Donnell, witnesses in the jury, but it is doubtful whether a party himself could make a valid agreement to waive a jury in

. The result of the respondent's agreement was word. His motion to continue the cause was the law, and of the course be intended to pursue. No such agreement should in fact be made withsulting the client. We do not think that the accepting the proposition to make this agreement, is entirely removed by dividing it, nor can we see any excuse for an hour's delay to inform the Attorney-General of all the facts in the case. Further than this, we attach no blame to the respondent, and the rule is accordingly discharged.

> H. A. WIDEMANN, Justices of the Supreme Court.

ALFERD S. HARTWELL

NOTICE IS HEREBY GIVEN,

THAT THE At Tahiti,

Is again put in Working Order.

This Railway is capable of taking sp Vessels measuring up-to 45 metres (148 ft.

The draft of water forward must not exceed 2 metre 30 centimetres (7) ft. abt.), the draft aff calculated at the maximum increase of 5 centimetres (2) imples) for each metre of keel. The charges for taking up a vessel, and staying the same upon the Railroad, remain the same as fixed per tariff of 18th Dec., 1854:

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Due de Montebello's Champagne, in pints and Clarets of various qualities. Red and White Burgundy, pints and quarts. Rudesheimer, Marcobranner, Johannisberg, qu

Sparkling Hock and Moselle, in Pints.

French Sherry and Port. Cases of Irish and Scotch Whishy, Curseau. Orange Bitters, Augustura Bitters, Anisette. Noyau, Port. Pale Brandy,

Casks old Madeira.

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A Fine Assortment of

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On the Most Reasonable Terms.

A MERICAN MESS BEEF & Prime Pork, BEST ENGLISH Portland Cement,

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aforeseid, and that Orioff Peterson and constitutional rights which the respondent as an Attorney
could not waite, produced the law of the case to
the Court, and retired from the cause. And the
respondent avers that he acted in good faith in

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Hanolnip, Sept. 14th, 1870,-33-6m

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